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gence upon the part of the thrower. We think there was sufficient evidence to support the finding by the jury that the act of the delivery boy in this case throwing said paper under the conditions and surroundings shown to have existed at the time and place of the alleged accident was negligence, and that a person in the exercise of ordinary care and prudence might reasonably have anticipated that some injury to some of those shown by the evidence to have been on the porch might result from such act."

Upon the trial there was a verdict for plaintiff for \$10,000. As to this the court said:

"While it is to be regretted that such serious and unusual damage resulted from such seemingly slight act of negligence on the part of appellant's delivery boy, we are not for that reason alone authorized to reverse the judgment based upon the findings of a jury supported by evidence."

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**Money Lent—Expectation of Marriage—Form of Remedy to Recover.**—In *Burke v. Nutter*, in the Supreme Court of Appeals of West Virginia (March, 1917, 91 S. E. 812), it was held, according to the syllabus by the court, that "money advanced by plaintiff to defendant, to whom he is then engaged to be married, and in expectation of marriage, whether understood and intended as a loan or a gift, is recoverable in assumpsit upon the common counts if the defendant thereafter breaks the engagement without plaintiff's fault." On this point the court said:

"Counsel for defendant insist that the proof shows the money was given in consideration of marriage, and, being so given, it cannot be recovered on the common counts, but must be recovered, if recoverable at all, only on a special count alleging breach of promise. Both parties admit the engagement, and that they had agreed to marry in July, 1914. In some of his letters to defendant plaintiff addressed her as 'dear wife,' and in some of her letters to him she signs as 'wife.' But she admits, in her testimony, she had no intention at any time of carrying out her promise of marriage. So that if she obtained the money as a gift, she obtained it fraudulently, and no authority need be cited to support the proposition that money fraudulently obtained may be recovered in assumpsit. Hence, whether the transaction was a loan, or a gift in consideration of marriage to be thereafter consummated, is immaterial, because, upon either theory, the present action is maintainable. If the money was a gift, it was made in consideration of marriage, and was fraudulently obtained, according to defendant's own admission, and it would be unconscionable to allow her to retain it after having broken her contract to marry plaintiff."